

PUBLIC CHAPTER NO. 1146

HOUSE BILL NO. 2469

**By Representatives Sherry Jones, Sontany, Richardson, Lois
DeBerry, Lynn, Maggart, Brown, Gresham, Favors, Harwell, Rowland,
Pruitt, Cooper, West**

Substituted for: Senate Bill No. 3219

By Senators Black, Burks

AN ACT to amend Tennessee Code Annotated, Title 37, relative to release of confidential records in certain circumstances.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Section 37-5-107, is amended by deleting the current language in its entirety and by substituting instead the following:

(a) All applications, certificates, records, reports, and all legal documents, petitions and records made or information received pursuant to this title and directly or indirectly identifying a child or family receiving services from the department shall be kept confidential and shall not be disclosed, except as allowed by existing statutes, rules or policies, or statutes as they may be amended or as specified in this section.

(b) The department may use or release information in the following circumstances:

(1) The department may utilize any information it has or may acquire to provide services to the child; and

(2) The department may release records to a person or entity who may be providing system or program evaluation.

(c) The department shall release information in the following circumstances:

(1) Upon request, the department shall release records to any child abuse review teams or child fatality review teams that are created or authorized by state law to review the activities of the department or to evaluate or investigate the cause of injury to or death of a child;

(2) The department shall release records to any law enforcement agency, grand jury or court upon presentation of an appropriate court order;

(3) Upon written request, the department shall release records to any federal, state or local government entity or agent of such entity that has a need for such information in order to carry out its responsibilities under law to protect children from abuse and neglect in compliance with 42 U.S.C. § 5106a(b)(2)(ix);

(4) The department shall provide for the public disclosure of information about any case that results in a child fatality or near fatality in compliance with 42 U.S.C. §5106a(b)(2)(x);

(5) The department shall release records to any person or entity who provides system or program evaluation at the request of the department;

(6) The department shall release to the Tennessee commission on children and youth any and all records requested by the commission that the commission believes necessary to perform its duties and responsibilities pursuant to § 37-3-103, particularly for the purpose of evaluating the delivery of services to children and their families served by the department; and

(7) Upon written request, the department shall release records to any person who is the subject of a report made to the department, or to such person's parent or legal guardian if the person is a minor and the parent or legal guardian is not the alleged perpetrator of or in any way responsible for the child abuse, child neglect or child sexual abuse against the child whose records are being requested. A person provided access to records pursuant to this subdivision (c)(7) shall maintain the confidentiality of such records except to the extent necessary for proper supervision, care or treatment of the subject of the report.

(d) Pursuant to subdivision (c)(3), the department shall disclose records and information to any member of the general assembly to enable such member to determine whether the laws of this state are being complied with to protect children from abuse and neglect and whether such laws need to be changed to enhance such protection, provided the procedures set out in subdivision (d)(1) through (d)(3) and any other procedures required by law are followed.

(1) If a member of the general assembly receives a written inquiry regarding whether the laws of this state that protect children from abuse and neglect are being complied with or whether such laws need to be changed to enhance protection of children, the member of the general assembly may submit a written request to the department, requesting review of the records and information relating to the inquiry. The member's

request shall state the name of the child whose case file is to be reviewed and any other information that will assist the department in locating the information.

(2) The member shall sign a form, before reviewing the records and information, that outlines the state and federal laws regarding confidentiality and the penalties for unauthorized release of such information. All records and information being reviewed by any member shall remain in the department's possession.

(3) After reviewing the records and information, if the member requests additional information, the department shall discuss the circumstances related to the records and information being disclosed.

(e)

(1) Any person or entity, including the Tennessee commission on children and youth, who is provided access to records under this section shall be required to maintain such records in accordance with state and federal laws and regulations regarding confidentiality.

(2) It is an offense for any person who has received or has been provided access to confidential information pursuant to this section to knowingly disclose or knowingly cause to be disclosed such information to any person or entity not otherwise provided access to such records by law.

(3) A violation of this subsection (e) is a Class B misdemeanor.

(f) Upon placement of a child in the custody of the department of children's services, all state, county and local agencies shall, notwithstanding any state laws or regulations to the contrary, grant access to any and all records in their possession that relate to the child for use by the department of children's services to determine a child's condition, needs, treatment or any other area of management; provided, however, that release of health care information must be consistent with the laws and policies of the departments of health and mental health and developmental disabilities. The department of children's services shall comply with federal statutes and regulations concerning confidentiality of records. Any records that are confidential by law upon the enactment of this legislation shall be maintained as confidential by the department of children's services.

(g) Except as otherwise provided pursuant to 20 U.S.C. § 1232g(b)(1), prior to the release of student records, the local education agency must give written notice to the student and parent as required by

20 U.S.C. § 1232g(b)(1), and must provide the parent with a copy of all records released.

(h) Release of drug and alcohol records must comply with federal and state laws and regulations regarding the release of these records.

(i) Except as provided for in subsection (c)(2), nothing in this section shall ever be construed to permit or require the department to release or disclose the identification of the person making a report of harm in accordance with § 37-1-403.

(j) The department, in consultation with the Tennessee commission on children and youth, shall adopt such rules and regulations as may be necessary to establish administrative and due process procedures for the disclosure of records and other information pursuant to this section.

SECTION 2. Tennessee Code Annotated, Section 37-1-612(b), is amended by deleting the language "Except as otherwise provided in this part or part 4 of this chapter" and by substituting instead the language "Except as otherwise provided in § 37-5-107, this part or part 4 of this chapter".

SECTION 3. Tennessee Code Annotated, Section 37-1-409(a)(1), is amended by deleting the language "Reports of harm made under this part" and by substituting instead the language "Except as otherwise provided in § 37-5-107, reports of harm made under this part".

SECTION 4. For purposes of the department of children's services adopting rules and regulations to effectuate the purposes of this act, this act shall take effect upon becoming a law. For all other purposes, this act shall take effect July 1, 2008, the public welfare requiring it.

PASSED: May 21, 2008


JIMMY NAIFEH, SPEAKER
HOUSE OF REPRESENTATIVES


RON RAMSEY, SPEAKER
SENATE OF THE SENATE

APPROVED this 13th day of June 2008



PHIL BREDESEN, GOVERNOR